THE REPORTER

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Induction and Exam Orders Stopped

National Headquarters of Selective Service has instructed local Boards through State Directors to cancel all orders to report for induction or for armed forces physical examination and to issue no others until further instructions are received.

This follows upon the Army's notice that no calls for draftees will be given during February and March. The Army claims it lacks funds for more men than it now has. Replacements are being filled by volunteer enlistments.

The letter to local boards directs them to continue registering persons required to do so, mail questionnaires, complete classification of all registrants and forward appeal cases.

Appeals Continue

In order that there be no delay in the appeals of registrants National Headquarters has directed local boards to proceed with appeals from I-A and I-A-0 without the armed forces physical examination. This amends the regulatino which requires that a registrant appealing from a I-A or I-A-O classification first have the examination to eliminate the possibility of being rejected by the armed forces if he should be sent up for induction. A conscientious objector who has an appeal pending should make a written or verbal inquiry from his local board to find out whether his appeal has been taken to the appeal board.

Hospital Aides Resign In Protest Against CO

(From *The Columbus, Ohio, Citizen*)

Three attendants at the Columbus State Hospital have resigned in the belief that they might be forced to take orders from a conscientious objector.

A spokesman for the three said they understood the conscientious objector was to be promoted from attendant to supervisor.

However, Dr. J. F. Bateman, superintendent of the hospital, said Friday that all supervisory posts were filled.

"These attendants displayed an infantile reaction," Dr. Bateman said. "They called several meetings to pass out resignation blanks, but the other attendants laughed at them."

He said he understood a few other attendants were thinking about quitting, but added:

"Most of the veterans employed here are not in sympathy with such a move. If the others quit, I'll be glad to accept their resignations."

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Selective Service Regulations Stump Sincere CO's

By WILLIAM E. ROSTRON, JR., A.B., LL.B.

Registrants under the 1948 Act can appeal from any classification in which they are placed except IV-F and V-A, but the classifications which they can obtain on their appeals depend somewhat on the time at which they do it.

Selective Service Regulations list the classifications like this:

I-A—available for service.
I-A-O—C.O. available for noncombatant service.
I-C—already in service.
II-A—occupational deferment.
II-C—agricultural deferment.
III-A—dependency deferment.
IV-A—veteran.
IV-B—deferred official.
IV-C—alien.
IV-D—minister.
IV-E—deferred C. O.
IV-F—unfit for service.
V-A—overage.

If a man is put in II-C now and he desires any classification lower on the list, he must appeal immediately, but if he wants any classification higher on the list than his II-C, he can wait until they try to take him out of II-C and put him in I-A or some other classification and then appeal. He can appeal from lower categories when he is put into a group, but he can appeal for higher ones when he is taken out. Therefore there is grave danger that if a man does not appeal from his II-C until they take him out of it, the appeal board may only consider those classes listed above II-C and not consider IV-E at all. The same rule applies to III-A, IV-A, IV-D, and other classes.

This rule was created through the combined efforts of Congress, Selective Service, and the courts. Congress gives the registrant the right to be considered for a CO deferment. All that the Selective Service Regulations add is that the local board should place the registrant in the lowest classification for which he is eligible. This regulation has the effect of determining the time at which the board must determine the deferment, and along with the regulation requiring that an appeal from any determination must be taken in ten days from the time of notification, it has the effect of setting the specific time at which the right to be considered for a CO deferment must be exercised by the CO.

One rationalization for the regulation is that Selective Service wants to interpret its figures on how many men are available to be drafted later on; if each board were allowed to choose the classification which it would put men in first, the figures would mean nothing. Suppose a man is a veteran, married, a recently won CO, and a minister; one board would give him a veteran's deferment, another a marital deferment, a

(*Continued on page* 2)

4,502 Classified IV-E

As of December 31, 1948, 4,502 registrants under the Selective Service Act of 1948 were classified in IV-E (deferred CO), according to National Headquarters of Selective Service.

Reports from State Directors show that Ohio had 795 IV-E classifications, Kansas 744, Pennsylvania 520, Indiana 464, California 200, Virginia 186, Michgan 181, Illinois 156, South Dakota 133, Nebraska 115, Tennessee 101.

The number of IV-E classifications by states and territories is as follows:

Alabama	7	New Hampshire	2
Arizona	14	New Jersey	17
Arkansas	7	New Mexico	18
California	200	New York City	6
Colorado	15	New York (ex. NYC)	35
Connecticut	7	North Carolina	23
Delaware	10	North Dakota	39
District of Columbia	3	Ohio	795
Florida	19	Oklahoma	54
Georgia	6	Oregon	99
Idaho	37	Pennsylvania	520
Illinois	156	Rhode Island	2
Indiana	464	South Carolina	3
Iowa	93	South Dakota	133
Kansas	744	Tennessee	101
Kentucky	4	Texas	34
Louisiana	9	Utah	x
Maine	2	Vermont	1
Maryland	67	Virginia	186
Massachusetts	6	Washington	26
Michigan	181	West Virginia	25
Minnesota	75	Wyoming	x
Mississippi	13	Alaska	2
Missouri	65	Hawaii	1
Montana	33	Puerto Rico	1
Nebraska	115	Virgina Islands	x
Nevada	2		

Non-registrants Arrested

The Central Committee for Conscientious Objectors indicated on January 24 that 55 persons had been arrested for refusing to register. Twenty-four of the 55 arrested were now serving prison sentences, 1 was on probation, 1 was dismissed, 4 registered after arrest and 25 cases were pending before the courts.

About 9 of the men were members of no church and the affiliation of 11 men is unknown. Of the remaining 35 two-thirds claim to be Friends and the remaining one-third is divided among Methodist, Presbyterian, Congregational, Baptist, Brethren and Mennonite churches.

At least 10 of the men are married. Those with World War III records are equally divided between ex-prison, ex-CPS and veterans of the armed forces.

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S.S. STUMPS CO's (continued from page 1)

third a ministerial, and a fourth his CO classification. The SS Regulation creates uniformity in the classification; any kind of meaningful bookkeeping on manpower requires that there be some order among the classes for which a registrant can be considered.

Courts Make Draft Boards' Promises of IV-E Doubtful

It is possible of course that a draft board might deny a man this right granted by the statute. **For example it might give a registrant II-C (farm deferment) without considering his claim to IV-E, promising him that it will look into his religious views on a later occasion. Suppose after doing this the board later takes the farmer out of II-C and puts him in a I-A and the man appeals for the first time at this later date when he is taken out of II-C rather than when he was put in that class. Then the appeal board sustains the I-A. The man refuses to be inducted and he is prosecuted for his refusal.** His defense will be that the board never considered his IV-E according to the right granted by the Act and at the time or rather, in the order, prescribed for the board by the regulations. The court will require the registrant to prove this; and if the original board members are dead, or if they deny their promise, this will be difficult or impossible to do. The court applies a rule called the presumption of regularity, which means that the court will always assume that an administrative agency has obeyed the regulations that govern it (in this case the regulation requiring the board to put a man in the lowest classification for which he is eligible), and it is for the private individual to show that the opposite is true when the board has done something irregular. In this case therefore the court will assume that the board obeyed the regulation requiring it to put the man in the lowest classification for which he is eligible and will reason that when it put him in II-C it was because the board had considered all of the lower classifications and found that the man did not qualify for any including IV-E. Therefore if the board offers to act irregularly in classifying a man by considering his IV-E at some date later than the regulations require, the man must not accept the offer, but must appeal immediately, within ten days of the first classification higher than IV-E which he receives, or else the presumption of regularity might cause a court to say that his IV-E has already been considered when it actually hasn't been. The court rule combined with the Selective Service Regulation serve to make it very risky for COs to take any classification higher than IV-E on the basis of an informal arrangement with the draft board.

Draft Board Misleads CO On Safe Appeal Time

Suppose a registrant filed his conscientious objector Form 150 when he first registered, but was denied his IV-E and placed in II-C instead; then he failed to appeal in the allotted ten days, and now several months have passed since he was placed in II-C; what can be done to remedy the situation now?

There are three common variations of this case and a number of fancy, less common ones. The remedy is slightly different in each case. **If the registrant failed to appeal because the board has told him that they will not consider IV-E until later, and that taking II-C is in no sense a drawback to receiving IV-E, at some future date,** the registrant should show his board the material in this article and point out Regulation 623.2 which prescribes the order in which classification shall be considered.

Since Section 10 (b) (3) of the Selective Service Act only gives the board the power to hear and determine questions *under the rules and regulations* and the draft board has in this case departed from the regulations, the original classification was void. The registrant should point out that since the classification is void because the local board admittedly did not consider some of the lower classifications according to the Regulation 623.2, the board is still under an obligation to proceed with his classification under Regulation 623.1, which requires that the board classify a registrant as soon as possible after the return of the Form 100 (CO Form 150 is made a part of Form 100 by the Regulations). The registrant should request the board to proceed with his original classification and consider his claim for IV-E. He may if he chooses accompany this request with an alternative request in the same letter that if the board will not do this he would like them to transfer his case for classification to some neighborhing board which he considers more friendly. Regulation 623.9 permits the registrant to be transferred for classification whenever he is so far as to make complying with board notices a hardship or when the majority of the members of the board for any reason withdraw from the consideration of his classification.

If the board refuses to comply with these steps, then the registrant should write to his State Director of Selective Service and ask that the State Director make written request that the local board reconsider the classification or else transfer the case according to his responsibility for carrying out the functions of Selective Service in the state which is defined in Regulation 604.12. The requests are in the alternative, a request for reconsideration or for transfer, so that the registrant can take into account the personalities involved and ask for either one of them, or for both in the order of priority he thinks most appropriate to his situation.

CO Quotes Regulations in Letter to Local Board

Regulation 626.2(d) gives the board the power to permit late appeals when the registrant failed to do so in the allotted time due to circumstances beyond his control. The same section indicates that lack of understanding is such a circumstance. One may also request that the State Director take the appeal for him under Regulation 626.1, which if it is granted will not be a late appeal since the State Director can take one at any time, although its being granted depends just as much on discretion as the request for the late appeal with the local board. The original classification being void, with the reasons it is void, should be stated in requests for appeal. The registrant should not request the appeal until the request for reconsideration and transfer have been denied unless he wants the request for appeal to weaken his first preference. The first two requests were for a local board decision, which will lose entirely if the appeal is granted immediately. It would be better to have a reconsideration or transfer since the right to appeal in ten days will automatically follow either one of these two new classifications and the man will have the benefit of two chances for his classification, one before the local board and one on appeal; but if the man requests belated appeal immediately without asking for the other two then he will get only one chance, that before the appeal board. A second chance to obtain one's classification should not be regarded lightly.

If the registrant wants to get all this in one letter, he will have to write the local board asking for the reconsideration or the transfer or both, and add a paragraph saying that he wishes *that* letter to be understood as a request for an appeal if the others are denied, but that he would rather have the others first for the above stated reasons. If the board denies whichever of the first two the registrant asks for, but grants the belated appeal, then the letter to the State Director should express the willingness of the registrant to drop the appeal if the reconsideration or transfer are granted by the Director, but only if they are granted; if the local board denies the belated appeal as well, however, then the letter to the State Director should contain that request as a final choice.

I have included all citations for regulations in the answer because it is the most effective kind of request to make; many draft boards are not well acquainted with their powers and limitations until the registrant points them out. Moreover, a classification is void only when the board has violated some regulation; therefore if the registrant cites all applicable regulations correctly, and as many as he can without being confused, he has greatly increased the likelihood that the board shall deny him something of which he can take advantage when he comes to court. It should be apparent that where the defense in court is apt to rest entirely on the fact that the draft board deviated from the regulations, it is entirely in the man's interest to cite them and to

(*Continued on page* 3)

cite them correctly, leaving any possibility of misinterpretation to the board. When we cannot predict the exact nature of any case that might arise, that is the best preparation for any and all cases. An attorney for COs recently told me that he estimates some 600 COs went needlessly to prison during the war because this point was not appreciated soon enough.

Local Board Silent in Denying IV-E to CO

Suppose the case were slightly different to the extent that the board had considered the IV-E and denied it, putting the registrant in II-C and the registrant failed to appeal since he believed he could do that later. This case is the second of the three common cases and differs from the first one in that the board has considered first the lower classification and has not therefore violated the regulations, although the registrant disagrees with the result reached. The classification is not void even though it might be changed if an appeal can be obtained. There is much less reason to hope for any reclassification by the local board itself, since the man submitted all his evidence, the board looked at it, and rejected the classification. The board has considered the case once and so there is nothing in the regulations requiring the board to consider it again as there was in the first case. Every registrant is entitled to a hearing with his local board at least within ten days of the time that it classifies him in order to have them make the original classification differently, and the local board can grant this hearing after the ten days have passed where there were circumstances beyond the registrant's control that prevented his asking within the specified time, Regulations 624.1(a) and 624.1(d). Probably lack of understanding is such a circumstance just as it is in the late appeal section, 626.2(d); but the registrant might have to point out that the late appeal section includes it in order to persuade the board that it is probably also to be included in the late hearing section. Whether the registrant bothers to ask for the late hearing is entirely a matter of how he feels about the likelihood of the board making any change. The late hearing is recommended here, but not in the first case, because the late hearing is somewhat discretionary with the board, while in the first case where the board's original classification is void it is absolutely binding on the board that it must go ahead and make a valid original classification, and the much stronger Regulation 623.1 commanding the board to make the original classification can in that case be cited, rather than the weaker hearing section.

If this registrant decides that a hearing would hardly be worth the time spent, then he should write requesting a late appeal and citing the late appeal section 626.2(d); if that fails, he should write to the State Director and ask that the appeal be taken for him by the Director, Regulation 626.1. The Director is not limited to finding circumstances beyond the registrant's control, including lack of understanding; but that factor should be mentioned since it will certainly influence him.

Draft Board Endangers Legality of Its Order

Suppose that the board considers the man's request for IV-E and denies it just as in the second case discussed, but the man does put in his request for appeal in the ten days period allowed; the board in this case refuses to forward the man's appeal to state headquarters.

This is the third of the three common cases. While the board's determination up to this point has not violated any regulations and therefore might not be called void, still the regulations grant the registrant the right of appeal as does Section 6(j) of the Selective Service Act. Since Section 4(a) of the Act only authorizes selection and induction if it is done according to the manner provided in the Act, and since the Act and the Regulations authorized under it provide for appeal, any Order to Report for Induction issued after a properly timed appeal has been denied would be void. The registrant should therefore write to his State Director of Selective Service pointing out that the board has violated Section 6(j) of the Act which grants the right of appeal to COs and Regulation 626.(a) which repeats the Act, and request that the Director take the appeal for the registrant as he is empowered to do by Regulation 626.1.

The registrant who has for any of the reasons suggested above permitted his appeal time to pass and who is now in a position where he must seek to remedy the delay, should under no conditions reason that since he is already late he might just as well be later, and put off remedying his present state. Even though the draft board may be at fault, a court is not very likely to listen to the registrant unless he has done everything the regulations allow him to do to remove the defect. This rule is not consistent with the best law, but only one court has to date showed any more reasonable consideration.

If the registrant gets his case as far as the letter to the State Director and has no success, or if he fails in his appeal, or if his appeal to the state board has unsatisfactory results, he should write a letter to Major General Lewis B. Hershey, Selective Service Headquarters, Washington, D. C., and mail it to the National Service Board for Religious Objectors. We will take it over and try to obtain the most favorable consideration. National Headquarters of SS is not likely to act until local attempts have failed, and we may be able to advise the registrant as to whether his case has reached the proper stage in the proceedings to obtain the attention of Washington authorities.

As a matter of fact, it is wise for each man to write us about his case as soon as something goes wrong. The information applicable to his case may not be the same as what we have suggested above. Frequently men overlook elements in their case that are very important, and the information contained in our articles will not be the most appropriate.

Late Filing Requires Stronger Evidence

Notice that in all of the above cases the original assumption was that the registrant had filed his Form 150. **Suppose the man has never filed S.S.S. Form 150 (Special Form for Conscientious Objectors) and is then put in I-A. Six months later he asks for Form 150 and files it.** This can always be done, since Regulation 621.11 says that a draft board shall furnish the Form 150 upon request. However, the registrant will have to present somewhat stronger evidence of his sincerity at the later date, because the fact that he did not file 150 on time will in many cases be considered evidence that his mind when he first registered was not made up and will lead to some doubt as to how strongly it is made up when he files the Form.

When the Form is returned, even though the registrant has a classification higher than IV-E, such as II-C or I-A, and even though the Form is filed some six months or more after the date when it was supposed to be filed, the registrant may still be considered for the lower classification IV-E. Thus the "lowest classification rule" does not apply when Form 150 has not been filed.

The reader can see therefore that a CO can run into a great deal of complexity in tracing his way through the regulations. Almost no two cases would find the same regulations and arguments applicable. It is like attending a molasses pull; as soon as you have the difficulty off of one hand, you frequently find it on the other. Had the regulations been written on fly paper they would be no less troublesome than they are now. We strongly urge our readers to consult us for the correct approach in all cases.

Congress Grants CO's Special Appeals

There is, however, some argument, which should be made in any CO cases involving these points, that none of the regulations limiting the time of appeal or the time in which a reopening can be obtained with a late 150 should apply in CO cases. Section 6(j) covering COs starts out with the sweeping words, "*Nothing* contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to war in any form." [Italics supplied.] This comprehensive wording limits the rest of the title, including Section 10(b)(1) "The President is authorized to prescribe the necessary rules and regulations to carry out the provisions of this title." In other words 6(j) practically also reads "Nothing in these *Regulations* shall be construed . . ." etc. It was the case of

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CO APPEALS—(continued from page 3)

Billings vs. Truesdell which clearly held that a reference to the rest of the Act is a reference to the regulatons authorized by the Act as well. Therefore regulations limiting rights of appeal and reopening should not apply to CO cases. This line of argument applies to the lowest classification regulation as well.

There is another aspect of 6(j) which indicates that these rules and regulations should not apply to CO cases. Section 10(b)(3) which prescribes the classifying and appeal procedure for most cases reads: "Such local boards under rules and regulations prescribed by the President, shall have the power within their respective jurisdictions to hear and determine, subject to the right of appeal to the appeal boards herein authorized, all questions of claim with respect to inclusion for, or exemption or deferment from, training and service under this title, of all indviduals within the jurisdiction of such local boards. The decisions of such local board shall be final except where an appeal is authorized and is taken in accordance with such rules and regulations as the President may prescribe." But Section 6(j) on CO deferment has an entirely distinct wording with regard to CO appeals: "Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to particpation in such noncombatant service, be deferred. Any person claiming exemption from combatant training and service because of such conscientious objection shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing." The contrast between these two sections should be noted. The general section on appeals say that they shall be taken *in accordance with the rules and regulations*, but the Section 6(j) of CO appeals does not restrict the right with reference to rules and regulations. This reinforces the argument that Congress never intended that SS should have the power to make regulations restricting the rights of COs. The general section allows appeals where they are authorized (again probably by the Regulations); Section 6(j) grants them as a matter of right without reference to any further authorization.

JW's Reject CO Benefits In Court

There is a third reason to suppose that the Regulations cannot create time limits or conditions limiting the right of a CO to his IV-E. In most cases if a man is misclassified he cannot appeal his classification to a court of law. The reason is that the Section 10(b)(3) or general appeal section which I quoted above says that the board decision shall be final, and courts say that this shows Congressional intent that courts shall not review classifications. But in the CO appeal section, there is no wording that the decision of the boards or the appeal boards, shall be final and this evidently leaves the CO free to appeal his case to a court of law if the appeal board does not give him a IV-E, in some cases at any rate. There has been an erroneous impression in CO circles that the wording on the finality of board decisions applies to COs. This is completley wrong. The only Supreme Court decisions on the subject were in the cases of JWs who were classified in IV-E or some other category and who were *seeking* IV-Ds or ministerial deferment; Section 6(j) only apples to people who are *seeking* IV-E or I-A-O. So court decisions denying court review to JWs because of the "finality" wording, even if they were correct, would be no precedent in cases where the registrant is seeking IV-E. When a man seeks IV-E he is governed by 6(j) and that has no "finality" wording. So very likely appeals immediately to court are possible after the appeal board has denied a man his classification.

Another factor reinforcing the thought that 6(j) allows appeals to court is that although the general appeal section specifies the possibility of a Presidential appeal, 6(j) on CO appeals does not mention what will happen to the case after the state appeal board's decision. This failure to specify a channel to the President as well as a lack of wording to the effect the board decisions will be final seems to indicate an intention that courts could hear the cases after state appeal boards denied a man his classification.

If this should be decided to be true, that courts can hear CO cases after the state appeal boards, then many of the rules for classifying COs would eventually come out of the courts, and this provides an additional reason to believe that Congress did not intend the SS Regulations to hamper the COs in the process of seeking a fair consideration of their religious claims.

The total pattern of 6(j) therefore seems to indicate that the Regulations should not restrict the right of appeal. The wording that nothing in the title should be construed to require anyone to take the wrong classification, the specific failure to mention the rules and regulations when the general appeal section does repeatedly invoke them, the failure to specify any finality to board decisions or to channel appeals to the President all indicates that in cases of IV-E and I-A-O, it was the intention of Congress that simple 6(j) should not be turned into a trap by using a lot of SS regulations that complicate the procedure beyond the ability of many COs to handle their cases for themselves and which result in many not getting their proper classification.

The only kind of regulations which would put into effect the sweeping terms of 6(j) and preserve the religious freedom as 6(j) evidently intended it to be preserved would be some that permitted appeals and reopenings freely at any time, even after a man is in the army, and let final review lie with the courts. But until some court upholds our view that the Regulations do not restrict COs the only course for registrants to follow is to wind his way through the Regulations as we have suggested and keep on writing to us to know what his rights are and what Regulations he can invoke.

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Felon Classified IV-F

In an article in last month's REPORTER on the classification of former felons in IV-F (unfit) it was stated that the NSB knew of no felon who had been classified IV-F for violating the 1940 draft Act. Since then one of our readers has written in to us the name of a violator of the 1940 draft Act who has been classified IV-F.

Counting Time

When does the time period allowed a registrant for returning a questionnaire, asking for an appeal, etc., begin? Regulation 641.6 states: "The period of days allowed a registrant or other person to perform any act or duty required of him shall be counted as beginning on the day following that on which the notice to him is posted or mailed."

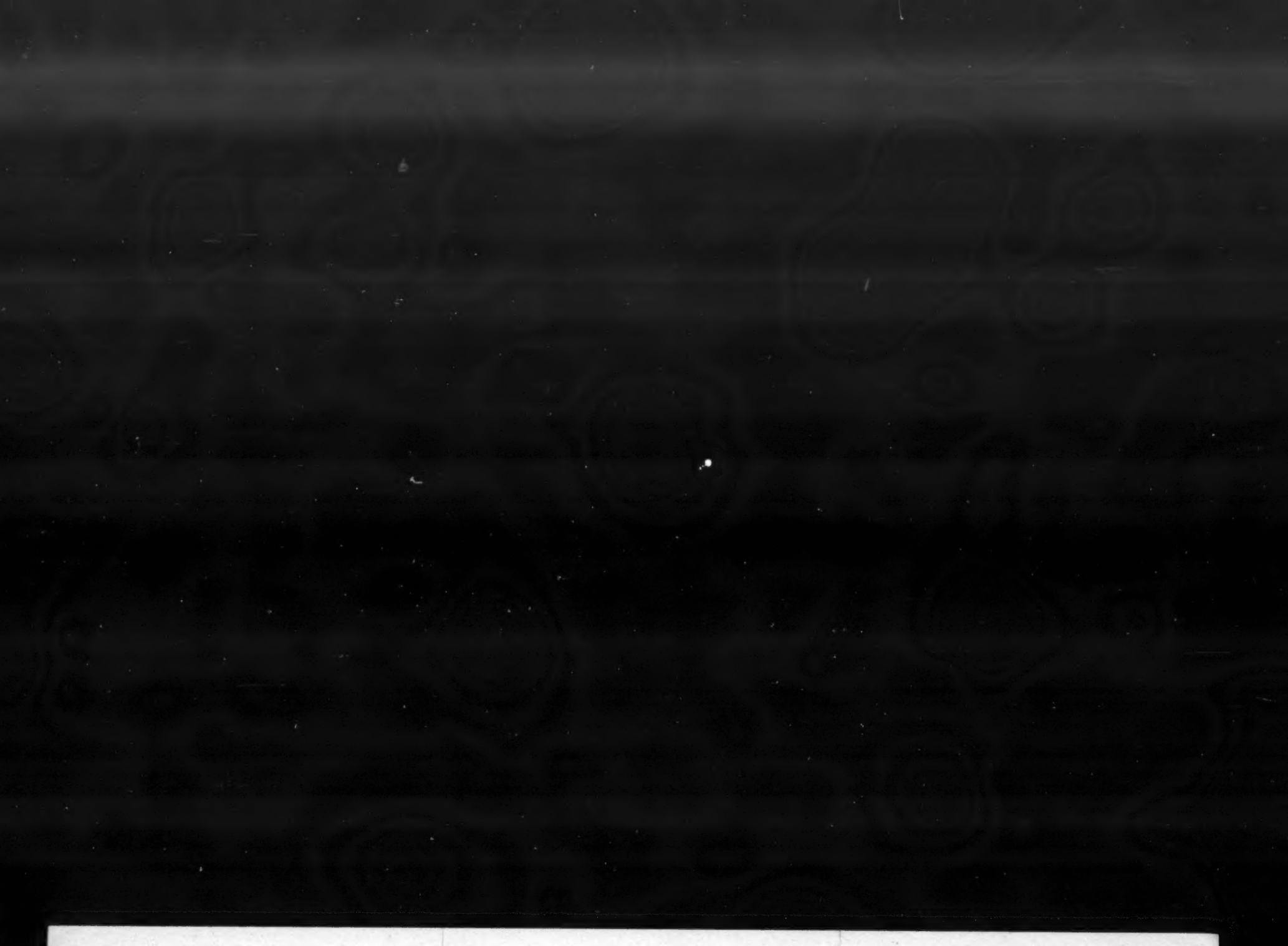
Lancaster County

The Lancaster, Pennsylvania *Intelligencer-Journal* reports that 163 drafts questionnaires returned by registrants in the 24- and 25-year age groups in Lancaster County were marked conscientious objector.

The paper states that the majority of the CO's are classified in IV-E by the three county draft boards. Lancaster County has a heavy concentration of Mennonite and Amish settlements.

HOSPITAL—(continued from page 1)

Dr. Bateman said there are 12 supervisors and 280 attendants employed at the hospital.

He said the conscientious objector handed in his resignation when he learned of the opposition to him. Dr. Bateman declined to say whether he had rejected or accepted it.

Dr. Bateman said the conscientious objector was assigned to the hospital during the war and had worked there since. He said he was one of the finest attendants at the institution.